

non est factum is also required to be verified by affidavit; or, the defendant, being heir or executor, may obtain leave from the Court to put in such plea.

XII. The defendant's plea must be substantially good,²⁴ for a defect in this respect is not cured by verdict, and hence it was, that before this Statute if the defendant had pleaded payment without an acquittance and it had been found for him, he could not have judgment, for the obligation remained in force until dissolved *eodem ligamine quo ligatur*, and the gist of the bar was therefore bad; see *Nichol's case*, 5 Rep. 43. So the bond being forfeited by non-payment at the day mentioned in the condition, a payment after the day could not be pleaded at common law. This section therefore allows any payment, which, if made at the day, might be pleaded as a defence at common law, to be pleaded after the day, and before action. And so is the form of the plea, *that the defendant, after the day mentioned in the condition, and before the commencement of the suit, paid the money mentioned in the condition, with interest, &c.*;²⁵ but see *Dixon v. Parkes*, 1 Esp. 110, that where the obligee of a bond receives the whole principal after it is payable, he cannot recover interest in an action on the bond for *solvit post diem* is a good plea. The form of a plea of payment to a deed, or other contract, given in the Code, Art. 75, sec. 22, sub-sec. 51,²⁶ is substantially the same. Declaration on bond, conditioned for the payment of a certain sum at the expiration of seven years, and interest

²⁴ **Partial payments.**—The plea must profess to answer the entire demand and allege payment in full but the defendant may nevertheless give evidence of partial payments and thus reduce the amount sought to be recovered. Both reason and justice require that he should be allowed the benefit of all part payments proved by him, in order to save him the necessity of applying to a court of equity for relief. *Rohr v. Anderson*, 51 Md. 216, 217. Cf. *Poe's Pleading*, sec. 651.

²⁵ Sections 12 & 13 merely recognized and confirmed the doctrine previously established by courts of equity that, in the case of a money bond with a penalty, the true intent of the penalty was to secure the payment, not only of the stated principal money and interest on the day fixed, but also of subsequent interest down to the actual payment of the principal, although the bond contained no stipulation for interest beyond the day fixed. The interest is, under the Statute, payable as interest and not as damages for non-payment on the day fixed. *In re Dixon*, (1900) 2 Ch. 561; (1899) 2 Ch. 561.

²⁶ Code 1911, Art. 75, sec. 24, sub-sec. 51.

As to the creditor's acceptance of, or agreement to accept, a less sum than the whole debt, see *Oberndorff v. Union Bank*, 31 Md. 132; *Maddux v. Bevan*, 39 Md. 485; *Loney v. Bailey*, 43 Md. 10; *Loney v. Bayly*, 45 Md. 447; *Rohr v. Anderson*, 51 Md. 205; *Ingersoll v. Martin*, 58 Md. 74; *Chapman v. Smoot*, 66 Md. 13; *Snowden v. Reid*, 67 Md. 136; *Emmitsburg R. R. Co. v. Donoghue*, 67 Md. 388; *Virdin v. Stockbridge*, 74 Md. 481; *Chicora Co. v. Dunan*, 91 Md. 154; *Commercial Bank v. McCormick*, 97 Md. 703; *Prudential Ins. Co. v. Cottingham*, 103 Md. 319; *Scheffenacker v. Hoopes*, 113 Md. 111.